IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6353 of 2004
With
CIVIL APPLICATION No. 312 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMABEN WIDOW OF HANSKAMAL ATMA - PRAKASH GROVER - Petitioner(s)
Versus
SPECIAL SECRETARY (APPEALS) & 4 - Respondent(s)

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Appearance :
MR KK TRIVEDI for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
MR SATYAM CHHAYA, AGP for Respondent(s) : 1 - 3.
RULE SERVED BY DS for Respondent(s) : 1, 3,
RULE SERVED for Respondent(s) : 4,
MR RJ GOSWAMI for Respondent(s) : 4,
RULE UNSERVED for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 25/01/2007

ORAL JUDGMENT

1. Pursuant to the order passed by this Court dated 15.1.2007 in Civil Application No.312 of 2007, the main Special Civil Application is taken up for final hearing.

2. The short facts of the case are that the petitioners purchased the land by registered sale deed and the entry was mutated in the revenue record vide No.959 dated 20.8.1987. Thereafter, it appears that entry No.982 dated 23.7.1988 was mutated for including the names of the father, Hanskamal Atma Prakash Grover and the sister, Sudhaben Shiv Gandhi. The matter was taken in revision by the District Collector on the ground that the person, who purchased the land was not an agriculturist and the subsequent entry based thereon. It appears that thereafter the District Collector passed the order cancelling the entry on the ground that the land was purchased by a non-agriculturist and, therefore, there was breach of the provisions of Section 63 of the Bombay Tenancy and Agricultural Lands Act (hereinafter referred to as “the Tenancy Act”). The petitioners and

Smt.Sudhaben Shiv Gandhi preferred revision before the State Government being No.23/1996 and the revision came to be dismissed by the State Government as per the order dated 30.4.2004 and it is under these circumstances, the petitioners have approached this Court by the present petition.

3. It may be recorded that respondent No.5, though was one of the revisioning petitioners before the State Government, is joined as respondent No.5, instead of petitioner and as per Mr.Trivedi, learned Counsel for the petitioners, since she was outside, her name is not included as co-petitioner and, therefore, she is joined as respondent No.5.

4. Heard Mr.Trivedi, learned Counsel for the petitioners, Mr.Chhaya, learned AGP for the State Authorities and Mr.Kirit R. Chowdhary for Mr.Goswami, learned Counsel for respondent No.4.

5. It may be recorded that pending the aforesaid proceedings for cancellation of the entry, the proceedings also came to be initiated against the petitioners and others under Section 84C of

the Tenancy Act and the Mamlatdar as per the order dated 26.9.1995 had declared the transaction as invalid in Tenancy Case No.98/1995. The matter was carried before the Appellate Authority in Tenancy Case No.56/1996 and the said order of the Mamlatdar was confirmed vide order dated 20.8.1996. The petitioners together with the other persons carried the matter before the Revenue Tribunal and as per the order dated 29.9.2006, the Tribunal has allowed the revision and has set aside the order passed by the Mamlatdar and the Dy. Collector and as a consequence thereof, the notice under Section 84C of the Tenancy Act was discharged.

6. As such, in view of the decision of the Tribunal dated 29.9.2006, copy where of is produced at Annexure “A” with the papers of Civil Application No.312 of 2007, the cause for cancellation of the entry No.959 dated 20.8.1987 would not survive, however, Mr.Chhaya, learned AGP for the respondent Authorities submitted that the State Government may desire to

challenge the decision of the Tribunal before higher forum and as the order is recently passed, it may not be treated as operating for all time to come and this Court may not finally conclude that the proceedings under the Tenancy Act are terminated and are held in favour of the petitioners. He submitted that if the entry is allowed to continue and if proper direction is given by this Court to take care of the situation, as the State Government may challenge the order of the Tribunal, the same would sufficiently protect the interest of the Government.

7. Therefore, as such, if the proceedings under Section 84C of the Tenancy Act are culminated in favour of the petitioners, the whole basis of the order of the Collector and subsequently by the State Government in revisional jurisdiction would not survive and, therefore, the ground for cancellation of the entry No.959 dated 2.8.1987, in any case, would not survive. However, even if the matter is considered on the basis that at the time when the entry was mutated or when the

District Collector exercised the power in revisional jurisdiction, the transaction was, prima facie, in breach of the Tenancy Act, then also in view of the decision of this Court in case of **"Jayantilal Jethalal Soni v. State of Gujarat & Ors.", reported 2005(4) GLR, 3354,** the entry based on the registered sale deed is required to be continued on the revenue record with the clarification that the transaction is, prima facie, in breach of the provisions of Section 84C of the Tenancy Act and the reference is made and the rights of the parties shall be finalized as per the decision, which may be taken by the competent authority under the Tenancy Act.

8. I would have considered the matter further of continuing the entry No.959 dated 20.8.1987 with the aforesaid clarification in view of the decision of this Court in case of **"Jayantilal Jethalal Soni v. State of Gujarat & Ors."** (supra), however, as in the present case the cause itself has not survived and the proceedings under Section 84C of the Tenancy Act

has culminated in favour of the purchaser of the property, if the entry No.959 dated 20.8.1987 is allowed to continue in the revenue record, with the further direction to the revenue authority to mutate a fresh entry in the event the order passed by the Tribunal dated 29.9.2006 is challenged by the State Authorities before the higher forum and if any orders are passed therein, the same would also be reflected in the said entry, the same would be just and proper.

9. So far as the entry No.982 dated 29.7.1988 for inclusion of the names of the father and sister are concerned, as such in the proceedings before the District Collector, the same was taken in suo motu based on the illegality committed in mutating the first entry on the ground that the purchaser was not agriculturist and there was breach of provisions of Section 63 of the Tenancy Act. However, in the order of the State Government, it has been further observed that the entry No.982 dated 29.7.1988 for inclusion of the names of the father and the sister as co-owners is with a view to frustrate the basic

principles of law and the land is not purchased by the father and the sister and, therefore, the inclusion of the names of the father and the sister as co-owners is illegal. It does appear from the record that the State Government exercised the revisional power on such ground which was not in existence before the Collector and, therefore, to some extent it can be said that the State Government has exceeded in the jurisdiction. However, such observations, if are considered, to support the cancellation of the entry No.982 dated 23.7.1988, then also such cannot be treated as substitute for the show-cause notice to meet with the principles of natural justice. Even otherwsie also, as per the settled legal position, the entry neither confers any right, nor title in the property, which otherwise are not in existence. Therefore, as the District Collector exercised the power at the first instance for cancellation of the entry No.982 on the ground that for mutation entry No.959 the purchaser was not agriculturist and, therefore, subsequent entry

is to be cancelled, I find that if the entry No.982 is allowed to continue in the revenue record with the clarification that by such entry the title would not stand transferred or conferred in favour of the father and the sister of the original purchaser, no serious prejudice would be caused.

10. In view of the above observations and the discussion, the impugned order passed by the State Government is quashed and set aside on the ground that subsequently the proceedings under the Tenancy Act have culminate in favour of the petitioners and as now cause does not survive, entry No.959 dated 20.8.1987 is ordered to be restored in the revenue record with the clarification and the direction that in event the order passed by the Tribunal dated 29.9.2006 is challenged or modified by the higher forum known to law, appropriate entry in the revenue record shall also be made by the concerned Village. It is further directed that entry No.982 dated 23.7.1988 shall also consequently be restored in the revenue record with the

observations and the clarification that the entry shall not be treated as confirming title upon the father of the purchaser namely; Hanskamal Atma Prakash Grover and the sister of the purchaser namely; Smt.Sudhaben Shiv Gandhi. It is further observed and clarified that in the event either the father or the sister of the purchaser is asserting the title in the property, it would be open to them to resort to appropriate remedy before the competent Court for such purpose and the rights of the parties shall be finalised accordingly as per the decision, which may be taken in such proceedings.

11. The petition is partly allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, there shall be no order as to costs.

12. In view of the order passed by this Court in the main Special Civil Application, Civil Application No.312 of 2007 shall also stand disposed of accordingly.

25.1.2007 **(Jayant Patel, J.)**

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